

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MARTEK BIOSCIENCES CORPORATION,)
)
)
Plaintiff,)
)
)
v.) C.A. No. 03-896-GMS
)
)
NUTRINOVA INC., NUTRINOVA)
NUTRITION SPECIALTIES & FOOD)
INGREDIENTS GMBH, and TL)
ADMINISTRATION CORPORATION (f/k/a)
TWINLAB CORPORATION),)
)
)
Defendants.)

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Martek Biosciences Corporation, by its undersigned attorneys, hereby states the following cause of action for patent infringement against defendants, Nutrinova Inc. and Nutrinova Nutrition Specialties & Food Ingredients GmbH (collectively "Nutrinova"), and TL Administration Corporation.

PARTIES

1. Plaintiff Martek Biosciences Corporation ("Martek") is a Delaware corporation having its principal place of business at 6480 Dobbin Road, Columbia, MD 21045.
2. On information and belief, defendant Nutrinova Inc. is a Delaware corporation having a principal place of business at 285 Davidson Avenue, Somerset, NJ 08873.
3. On information and belief, defendant Nutrinova Nutrition Specialties & Food Ingredients GmbH is a German company having a principal place of business at Industriepark Hoechst, Frankfurt 65926, Germany.

4. On information and belief, defendant TL Administration Corporation ("TL Administration") (f/k/a TwinLab Corporation) is a Delaware corporation having a principal place of business at 150 Motor Parkway, Hauppauge, New York 11788.

5. On information and belief, TL Administration has entered into a business relationship with Nutrinova to enable TL Administration to produce and market TwinLab® Infant Care™ Multi-Vitamin Drops with DHA.

6. On information and belief, Nutrinova Inc. and Nutrinova Nutrition Specialties & Food Ingredients GmbH are affiliated companies.

NATURE OF THE ACTION

7. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35, United States Code, Sections 100 *et seq.*

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over Nutrinova Inc. and TL Administration by virtue of, *inter alia*, their incorporation in Delaware, their conduct of business in Delaware, their continuous and systematic contacts with Delaware, and their acts of infringement, contributory infringement and/or inducing infringement in Delaware.

10. This Court has personal jurisdiction over Nutrinova Nutrition Specialties & Food Ingredients GmbH by virtue of, *inter alia*, its conduct of business in Delaware, its continuous and systematic contacts with Delaware, and its acts of infringement, contributory infringement and/or inducing infringement in Delaware.

11. Venue is proper in this district pursuant to the provisions of 28 U.S.C. §§1391 and 1400(b).

PATENTS IN SUIT

12. United States Patent No. 6,607,900 (the “‘900 patent”), entitled “Enhanced Production of Lipids Containing Polyenoic Fatty Acid by Very High Density Cultures of Eukaryotic Microbes in Fermentors” (Copy attached as Exhibit A), duly and legally issued on August 19, 2003.

13. United States Patent No. 6,451,567 (the “‘567 patent”), entitled “Fermentation Process for Producing Long Chain Omega-3 Fatty Acids with Euryhaline Microorganisms” (Copy attached as Exhibit B), duly and legally issued on September 17, 2002.

14. United States Patent No. 5,340,594 (the “‘594 patent”), entitled “Food Product Having High Concentrations of Omega-3 Highly Unsaturated Fatty Acids” (Copy attached as Exhibit C), duly and legally issued on August 23, 1994.

15. United States Patent No. 5,698,244 (the “‘244 patent”), entitled “Method for Raising Animals Having High Concentrations of Omega-3 Highly Unsaturated Fatty Acids” (Copy attached as Exhibit D), duly and legally issued on December 16, 1997.

16. United States Patent No. 6,410,281 (the “‘281 patent”), entitled “Reducing Corrosion in a Fermentor by Providing Sodium With a Non-Chloride Sodium Salt” (Copy attached as Exhibit E), duly and legally issued on June 25, 2002.

17. Martek is the assignee and owner of the ‘900 patent, the ‘567 patent, the ‘594 patent, the ‘244 patent, and the ‘281 patent.

PATENT INFRINGEMENT

18. Plaintiff repeats and realleges each of the allegations of paragraphs 1 through 17 as if completely set forth herein.

19. On information and belief, Nutrinova itself and through its predecessors in interest, has been and still is making, using, offering to sell, selling and/or importing into the

United States food products and/or compositions comprising omega-3 fatty acids called docosahexaenoic acids (DHA), marketed as DHActive™ and/or Nutrinova®DHA, which infringe and/or whose use infringes, and will infringe in the future, the '900 patent, the '567 patent, the '594 patent, the '244 patent, and the '281 patent under 35 U.S.C. §271.

20. On information and belief, TL Administration, itself and through its predecessors in interest, has been and still is making, using, offering to sell, selling and/or importing into the United States food products and/or compositions comprising omega-3 fatty acids called docosahexaenoic acids (DHA) which it obtains from Nutrinova, and which it markets as TwinLab® Infant Care™ Multi-Vitamin Drops with DHA, which infringe and/or whose use infringes, and will infringe in the future, the '594 patent and the '244 patent under 35 U.S.C. §271.

21. On information and belief, Nutrinova has been and still is directly infringing, actively inducing infringement, and/or contributing to the infringement of the '900 patent, the '567 patent, the '594 patent, the '244 patent, and the '281 patent, and will so infringe these patents in the future.

22. On information and belief, TL Administration has been and still is directly infringing, actively inducing infringement, and/or contributing to the infringement of the '594 patent and the '244 patent, and will so infringe these patents in the future.

23. On information and belief, Nutrinova has conducted their unlawful activities with notice and full knowledge of the '900 patent, the '567 patent, the '594 patent, the '244 patent, and the '281 patent, and will continue those activities in the future.

24. On information and belief, TL Administration has conducted their unlawful activities with notice and full knowledge of the '594 patent and the '244 patent, and will continue those activities in the future.

25. On information and belief, Nutrinova's infringement of the '900 patent, the '567 patent, the '594 patent, the '244 patent, and the '281 patent has been, and continues to be, willful and deliberate.

26. On information and belief, TL Administration's infringement of the '594 patent and the '244 patent has been, and continues to be, willful and deliberate.

27. Unless enjoined by this Court, Nutrinova's continued acts of infringement of the '900 patent, the '567 patent, the '594 patent, the '244 patent, and the '281 patent will cause substantial and irreparable harm to Plaintiff.

28. Unless enjoined by this Court, TL Administration's continued acts of infringement of the '594 patent and the '244 patent will cause substantial and irreparable harm to Plaintiff.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

a. The entry of judgment in its favor, and against Nutrinova and TL Administration, determining that Nutrinova has infringed, and declaring that Nutrinova will infringe, one or more claims of the '900 patent, the '567 patent, the '594 patent, the '244 patent, and the '281 patent, under 35 U.S.C. § 271 and that their infringement has been willful, and determining that TL Administration has infringed, and declaring that TL Administration will infringe, one or more claims of the '594 patent and the '244 patent under 35 U.S.C. § 271 and that their infringement has been willful;

b. The entry of preliminary and permanent injunctions enjoining Nutrinova, their officers, directors, agents, employees, successors and assigns, and any persons acting in concert or privity with them, from infringing the '900 patent, the '567 patent, the '594 patent, the '244 patent, and the '281 patent and enjoining TL Administration, their officers, directors, agents, employees, successors and assigns, and any persons acting in concert or privity with them, from infringing the '594 patent and the '244 patent;

c. An award to Plaintiff of damages adequate to compensate for Nutrinova's and TL Administration's infringement, trebled or increased in such other amounts as the Court shall deem appropriate on a finding of willful infringement;

d. An award to Plaintiff of its costs and disbursements in this action, including its attorneys' fees; and

e. Such other relief as this Court deems just and proper.

JURY DEMAND

Martek hereby respectfully requests a trial by jury on all issues so triable.

ASHBY & GEDDES

/s/ John G. Day

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Dated: July 25, 2005

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